

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

	X	
	:	
HOWARD S. ROSENTHAL a/k/a HOWARD S. ROSE :	:	
and ROBERT MORRIS,	:	
	:	REPLY
Plaintiffs,	:	TO COUNTERCLAIMS
	:	
-against-	:	Docket No.:
	:	07 Civ. 6228 (RMB)
ROBERT M. DUFF,	:	
	:	
Defendant.	:	
	X	

Plaintiffs, Howard S. Rosenthal a/k/a Howard S. Rose (“Mr. Rosenthal”) and Robert Morris (“Mr. Morris”), by their attorneys, Herrick, Feinstein LLP, for their Reply to the Counterclaims asserted by defendant Robert M. Duff, responds as follows:

REPLY

Unless specifically admitted, Mr. Rosenthal and Mr. Morris generally deny the allegations of the defendant’s Counterclaims. Pursuant to the provisions of the Federal Rules of Civil Procedure, in response to the Counterclaims’ specifically enumerated allegations, Mr. Rosenthal and Mr. Morris state as follows:

Facts

1. Deny the allegations set forth in paragraph 1 of the Counterclaims.
2. Admit the allegations set forth in paragraph 2 of the Counterclaims.
3. Admit the allegations set forth in paragraph 3 of the Counterclaims.

4. As to paragraph 4, admit all the allegations thereof, except deny that all decisions regarding when and where to sell the items, or what the private sale or auction prices for the items would be, were to be decided by unanimous agreement.

5. Deny the allegations set forth in paragraph 5 of the Counterclaims.

6. As to paragraph 6 of the Counterclaims, admit all the allegations thereof, except deny that the distributions between the parties were not always equal.

7. As to paragraph 7 of the Counterclaims, deny all the allegations thereof, except deny knowledge sufficient to form a belief as to whether the Gold Mask was one of the most valuable single objects in the Collection, and admit that the Gold Mask remains in the possession and control of Mr. Rosenthal.

8. Deny the allegations set forth in paragraph 8 of the Counterclaims.

9. As to paragraph 9 of the Counterclaims, admit all the allegations thereof, except deny that Rosenthal took commissions without approval, and deny that Rosenthal has not fully returned those commissions to the partnership.

10. As to paragraph 10 of the Counterclaims, deny all the allegations thereof, except admit that the partners met in January 2006, that at this meeting the partners discussed approaching and proposing acquisitions of the Collection to museums, and that a portion of the collection remains within the possession and control of plaintiffs. Mr. Rosenthal and Mr. Morris deny knowledge sufficient to form a belief as to whether the Houston Museum conditioned a purchase on obtaining a license from the Brazilian government.

11. Deny the allegations set forth in paragraph 11 of the Counterclaims.

12. As to paragraph 12 of the Counterclaims, deny all the allegations thereof, except admit that defendant mounted certain pieces from the collection in the fall of 2006, and that those items were delivered to Mr. Rosenthal for sale on behalf of the partnership.

13. Deny the allegations set forth in paragraph 13 of the Counterclaims.

14. Deny the allegations set forth in paragraph 14 of the Counterclaims.

15. As to allegations set forth in paragraph 15 of the Counterclaims, admit all the allegations thereof, except deny that Mr. Rosenthal and Mr. Morris surreptitiously directed the Swiss warehouse to export some of the collection, and deny that defendant asked the warehouse to ship the goods to defendant so that repair and sales of the goods could be made.

16. As to paragraph 16 of the Counterclaims, deny all the allegations thereof, except admit that each of the parties control and possess a portion of the unsold collection, admit that Mr. Rosenthal and Mr. Morris control the majority of the unsold collection, and deny knowledge sufficient to form a belief as to the monetary values contained within the allegations set forth in said paragraph 16.

17. Deny the allegations set forth in paragraph 17 of the Counterclaims.

18. Deny the allegations set forth in paragraph 18 of the Counterclaims.

The Painted Stones

19. Admit the allegations set forth in paragraph 19 of the Counterclaims.

20. Admit the allegations set forth in paragraph 20 of the Counterclaims.

21. Deny the allegations set forth in paragraph 21 of the Counterclaims.

22. Admit the allegations set forth in paragraph 22 of the Counterclaims.

23. Admit the allegations set forth in paragraph 23 of the Counterclaims.

FIRST COUNTERCLAIM

24. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-23 as if fully set forth herein.

25. Admit the allegations set forth in paragraph 25 of the Counterclaims.

26. Deny the allegations set forth in paragraph 26 of the Counterclaims.

27. Deny the allegations set forth in paragraph 27 of the Counterclaims.

28. Deny the allegations set forth in paragraph 28 of the Counterclaims.

SECOND COUNTERCLAIM

29. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-28 as if fully set forth herein.

30. Admit the allegations set forth in paragraph 30 of the Counterclaims.

31. Admit the allegations set forth in paragraph 31 of the Counterclaims.

32. Deny the allegations set forth in paragraph 32 of the Counterclaims.

33. Deny the allegations set forth in paragraph 33 of the Counterclaims.

34. Deny the allegations set forth in paragraph 34 of the Counterclaims.

THIRD COUNTERCLAIM

35. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-34 as if fully set forth herein.

36. Deny the allegations set forth in paragraph 36 of the Counterclaims.

37. Deny the allegations set forth in paragraph 37 of the Counterclaims.

38. Paragraph 38 of the Counterclaims does not contain any allegations; as such, no response is required with regard to paragraph 38.

FOURTH COUNTERCLAIM

39. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-38 as if fully set forth herein.

40. Deny the allegations set forth in paragraph 40 of the Counterclaims.

41. Deny the allegations set forth in paragraph 41 of the Counterclaims.

42. Deny the allegations set forth in paragraph 42 of the Counterclaims.

FIFTH COUNTERCLAIM

43. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-42 as if fully set forth herein.

44. Admit the allegations set forth in paragraph 44 of the Counterclaims.

45. Deny the allegations set forth in paragraph 45 of the Counterclaims.

46. Deny the allegations set forth in paragraph 46 of the Counterclaims.

47. Deny the allegations set forth in paragraph 47 of the Counterclaims.

48. Deny the allegations set forth in paragraph 48 of the Counterclaims.

49. Paragraph 49 of the Counterclaims does not contain any allegations; as such, no response is required with regard to paragraph 49.

SIXTH COUNTERCLAIM

50. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-49 as if fully set forth herein.

51. Deny the allegations set forth in paragraph 51 of the Counterclaims.

52. Deny the allegations set forth in paragraph 52 of the Counterclaims.

SEVENTH COUNTERCLAIM

53. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-52 as if fully set forth herein.

54. Deny the allegations set forth in paragraph 54 of the Counterclaims.

55. Deny the allegations set forth in paragraph 55 of the Counterclaims.

EIGHTH COUNTERCLAIM

56. Mr. Morris and Mr. Rosenthal repeat each and every response to the allegations contained within paragraphs 1-55 as if fully set forth herein.

57. Deny the allegations set forth in paragraph 57 of the Counterclaims.

58. Deny the allegations set forth in paragraph 58 of the Counterclaims.

59. Deny the allegations set forth in paragraph 59 of the Counterclaims.

60. Deny the allegations set forth in paragraph 60 of the Counterclaims.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

62. Defendant's allegations fail to set forth facts sufficient to constitute a cause of action upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

63. Defendant's claims are barred by unclean hands.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

64. Defendant's claims are barred by waiver.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

65. Defendant's claims are barred by documentary evidence.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

66. Defendant's claims are barred by his own culpable conduct, including but not limited to breach of good faith in performing his contractual responsibilities and breach of fiduciary duties owed toward Mr. Rosenthal and Mr. Duff.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

67. Defendant's multiple breaches of the agreement, all of which were material, excused Mr. Rosenthal and Mr. Duff from performing any obligations on their part to be performed.

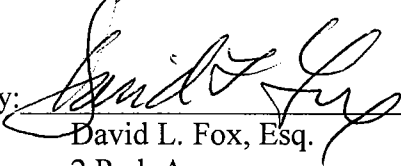
**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
TO DEFENDANT'S COUNTERCLAIMS**

68. Defendant's claims are barred by the Statute of Frauds.

WHEREFORE, Mr. Rosenthal and Mr. Morris demand judgment dismissing the Counterclaims and awarding Mr. Rosenthal and Mr. Morris the relief set forth in the Complaint, together with interest, cost, attorney's fees and whatever further relief is deemed appropriate by the Court.

Dated: New York, New York
August 28, 2007

HERRICK, FEINSTEIN LLP

By: 
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